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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 PATRICIA ISABELLE HEWLETT,

12 Appellant,

13 v.

14 JANINA ELDER, Trustee,

15 Appellee.

Case No: 07-CV-05883 CRB

**OPPOSITION TO MOTION TO DISMISS
APPEAL**

Date: February 1, 2008
Time: 10:00 a.m.
Place: 450 Golden Gate Ave.
Courtroom 8, Floor 19
San Francisco, CA

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18 The trustee's motion is predicated entirely upon the contention that the Notice of Appeal
19 filed November 5, 2007 was untimely because it appeals an order entered on September 28,
20 2007. It isn't because it didn't. On November 5, 2007, Ms. Hewlett appealed an amended order
21 issued by the bankruptcy court on November 2, 2007. (T247). Trustee offers no legal authority
22 to negate the commonsense conclusion that the issuance of an amended order on November 2,
23 2007 restarted the clock. Even if the clock did not restart, Ms. Hewlett was still entitled to join
24 the appeal filed by her brother, Javier Rivera, minutes before on November 5, 2007. Though she
25 has not included that notice of appeal in the record, the trustee acknowledges its existence on
26 page 6, line 19, of her memorandum.

27 The trustee provides a six-page recitation of facts which is not germane, highly
28 editorialized, and quite obviously designed to precondition the court. Buried on page 6, line 17,

1 of her memorandum, she mischaracterizes the November 2, 2007 Order merely as an order
2 “removing Mr. Rivera from the property.” That order applies to Ms. Hewlett as well.

3 A precise recitation of the facts follows. The trustee entered a contract to sell 1385 Clay
4 Street to A.J. Batt which contained contingencies requiring the building to be sold with six of its
5 twenty four units vacant, including unit 3. Unit 3 was occupied by Patricia Hewlett and her
6 brother, a subtenant. Ms. Hewlett primarily used it as a den from which she ran her business and
7 as the resident manager’s office. Mr. Rivera, a single man, who primarily resides with his
8 parents assisted as resident manager and used the unit as a crash pad for his nights on the town.

9 On September 28, 2007, Judge Carlson granted an order instructing Patricia Hewlett to
10 turn over unit 3 to the trustee. The court’s power to make such an order is subject to legal attack
11 in this appeal. As long as Mr. Rivera had a tenancy interest that order had no practical effect,
12 and the sale of the property had not yet been concluded.

13 On November 2, 2007, the court heard a motion on shortened time to amend and re-issue
14 the September 28, 2007 order. That order effectively ended the sublease, affecting Hewlett as
15 sublessor as well as Mr. Rivera as sublessee. Three days later, both filed an appeal, Mr. Rivera
16 taking first place in line.

17 As noted above, the trustee has not made any compelling argument why Ms. Hewlett’s
18 right to appeal the amended order was extinguished by dint of the existence of an earlier version.
19 One can only image the mischief that would obtain if amended orders are deemed unappealable.

20 The trustee does not and cannot argue that Mr. Rivera’s appeal was timely or that Ms.
21 Hewlett had standing to join the party once he had filed it.

22 The motion should be denied.

23 Respectfully submitted

24 DATED: January 11, 2008

JAMES ATTRIDGE

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27 By: /s/ James Attridge

JAMES ATTRIDGE
Attorney for Defendant
PATRICIA HEWLETT